

**LEGAL POSITION OF THE ISSUES ASSOCIATED WITH  
MAIN CONTRACTOR'S INSOLVENCY**

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*To my beloved Mother and Father.*

*Thank you for your support, guidance, and confidence in me.*

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## **ABSTRACT**

The East Asian Financial crisis has resulted in long-term financial difficulties, which translated into high level of insolvency especially in the sector of construction. Among the construction insolvency, the insolvency of a main contractor is the frequent occurrence. This has brought issues or problems to the sub-contractor who would become unsecured creditors in the event of main contractor's insolvency. The aim of this study is to determine the legal positions relating to issues faced by sub-contractor in the event of main contractor's insolvency. The issues that commonly arise are direct payment, retention fund, set-off, materials and goods, determination, novation etc. However, this study would only focus on the legal positions of the critical issues specifically: direct payment, retention fund, unfixed materials and goods, set-off and determination. The critical issues are those issues that are commonly arising. There are valid and invalid positions for each of the issue arise. For example, the valid position in direct payment means that the employer entitled to pay sub-contractor direct. While, invalid position is the sub-contractor not entitle to be paid directly by employer. The legal positions for each issue can protect the interaction of sub-contractor in the event of main contractor's insolvency. Therefore, the sub-contractor can use this study as guidance when dealing with those issues.

## **ABSTRAK**

Krisis kewangan Asia Timur telah menyebabkan kesukaran kewangan yang berjangka panjang. Ini telah mengakibatkan kejadian tak solvent yang begitu tinggi. Di antara kesemua jenis tak solvent yang berlaku dalam sector pembinaan, kejadian kontraktor utama yang tak solvent adalah yang paling banyak berlaku. Kejadian ini telah mendatangkan pelbagai isu dan masalah kepada sub-kontraktor yang rendah kedudukannya serta akan menjadi pemiutang tak sekure dalam kejadian sedemikian. Kajian ini bertujuan untuk mengenalpasti keadaan perundangan bagi isu yang dihadapi yang sub-kontraktor dalam kejadian kontraktor utama yang tak solvent. Isu-isu yang dihadapi oleh sub-kontraktor adalah bayaran terus, wang tahanan, pemotongan bayaran, bahan-bahan binaan, penamatan kontrak, bon dan jaminan serta pertukaran pelaksanaan. Namun begitu, kajian ini hanya tertumpu ke atas isu-isu yang kritikal iaitu bayaran terus, wang tahanan, pemotongan bayaran, bahan-bahan binaan dan penamatan kontrak. Isu yang kritikal adalah isu yang selalunya timbul. Terdapat keadaan yang berjaya dan gagal bagi setiap isu yang timbul. Contoh, isu bayaran terus, keadaan yang boleh diamalkan adalah dimana majikan boleh bayar sub-kontraktor secara terus. Oleh itu, sub-kontraktor boleh menjadikan kajian ini sebagai panduan dalam menyelesaikan masalah kontraktor utama yang tak solvent.